

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA

07 DEC 21 AM 11:41
FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
FILED
FEB 11 2008
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

RODNEY MARTIN

Plaintiff,

vs.

CASE NO: CV 07-5747 *EMC*

D. ANDREW BYRNE
ET AL

Defendants.

EMERGENCY

MOTION TO STRIKE FILING TITLED 'NOTICE OF MOTION TO DISMISS AND
"MEMORANDUM IN SUPPORT OF MOTION TO DISMISS" AND TO CANCEL

HEARING SCHEDULED FOR JANUARY 23, 2008, 10:30 AM

In accordance with (N. D. Local Rules) this Notice/Motion is submitted via facsimile due to the non routine and emergency nature of this filing. Original Document is being sent to the court via overnight delivery.

In accordance with (N. D. Local Rules), Plaintiff requests an Emergency Consideration of the motion to Strike and request to cancel hearing contained in this motion.

Plaintiff further requests this court waive all timelines and any potential Hearing on this matter be via Teleconference.

X/11

1. Rodney Martin, Pro Se, respectfully moves to strike a purported filing in the aforementioned matter and to cancel a purported hearing scheduled based on the motion for the following reasons
2. The motion is styled:

Rodney Martin et al

Plaintiffs

Vs.

Wilda Burroughs, et al

Defendants

3. The Pleading is for this reason defective and must be struck as there is no "Wilda Burroughs" that is a party to this matter.
4. Likewise the Pleading contains numerous errancies that clearly show confusion between the federal matter before this court and an apparent State Court matter, possibly in the matter of one "Wilda Burroughs" who is unknown to this Plaintiff and is not a party in this case.
5. The name "Wilda Burroughs" is listed as the defendant on both the Notice of Motion to Dismiss and the Memorandum in Support of Motion to Dismiss rendering both documents defective.
6. A most glaring errancy is on page 3 of the Memorandum in Support of the Motion to Dismiss at line 39, where the reference makes reference to "defendants OWN COMPLAINT", there is no logical way this statement can be placed into any context, other than the wrong pleading has been

submitted in the wrong case given the wrong party is listed as the defendant in both the Notice to Dismiss and the Memorandum in Support of the Motion, as there is no defendant complaint in this matter.

7. Additionally, there was no consultation with Plaintiff with regard to this Motion as mandated by Loc. Rules, perhaps there was consultation with "Wilda Burroughs", however, that person is not relevant to this case.

8. Nor has Plaintiff been provided a copy of the Pleading by Counsel who filed the materials. Plaintiff became aware of the Pleading as a result of a cursory review of the Docket. The court should take note that no Certificate of Service is attached to the Motion.

9. Finally, your Plaintiff, Rodney Martin, respectfully moves in light of the serious errancies and defects of the pleading, moves that the hearing scheduled based on said defective Motion be canceled until a proper Motion and memorandum is submitted and until after proper consultation has occurred. The court should take note that no Certificate of Service is attached to the Motion.

10. The court is advised that your Plaintiff is handicap with serious health issues and has a previous scheduled out of state trip on the dates of January 20 – 25, 2008, had the required Loc. Rule consultation taken place, this conflict would have been avoided.

In the interest of justice, your Plaintiff requests favorable consideration.

Respectfully submitted,



Rodney Martin

P.O. Box 1591

El Cerrito, Ca 94530

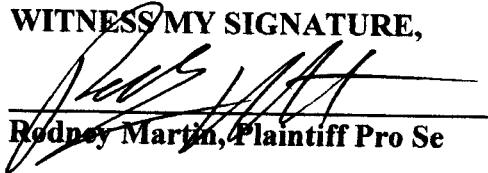
IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA CASE NO: CV 07-05747 EMC

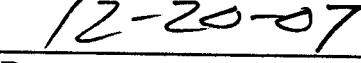
CERTIFICATE OF SERVICE

I, RODNEY MARTIN, do hereby CERTIFY that a true and correct copy of the foregoing has been furnished to all parties of record as known to me and listed below by U.S. Postal Service, postage prepaid on this the ^{20th} day of December, 2007; and consultation was held or attempted in good faith without resolution.

D ANDREW BYRNE PHILLIPS, NIZER, LLP 666 5 TH AVENUE NEW YORK, NY 10103	ARLO SMITH Matthew Sawyer 66 San Fernando Way San Francisco, Ca 94127
JACKSON MAYNARD JR 605 Suwannee St. Ste.MS58 Tallahassee, Fl 32399	THEODORE WEILL UNIVERSAL WEARPARTS 142 Old Hwy 98 West Tylertown, Ms 39667
JANELLE SKINNER-WEILL WINAN' WICHAPI TO INC. HC 75 Box 222 Merriman, Nebraska 69218	
RUBEN HERNANDEZ 309 Exeter St. Oldsmar, Fl 34667	
BEVERLY KENNEDY 3961 Merrill Rd Dallas, Tx 75229	

WITNESS MY SIGNATURE,


Rodney Martin, Plaintiff Pro Se


Date